

BEFORE THE
SURFACE TRANSPORTATION BOARD

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OCT 4 - 2006

Part of
Public Record

STB Finance Docket No. 34813



PETITION UNDER 49 U.S.C. 10502(d) TO REVOKE
EXEMPTION UNDER 49 CFR 1180.2(d)(3) GRANTED TO
NEW YORK NEW JERSEY RAIL LLC AND
NEW YORK CROSS HARBOR RAILROAD TERMINAL CORP.

REPLY OF NEW YORK NEW JERSEY RAIL LLC

Respectfully submitted,

John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800,
Washington, D.C. 20036
(202) 263-4180

Dated: October 4, 2006

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 34813

**PETITION UNDER 49 U.S.C. 10502(d) TO REVOKE
EXEMPTION UNDER 49 CFR 1180.2(d)(3) GRANTED TO
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REPLY OF NEW YORK NEW JERSEY RAIL LLC

INTRODUCTION

On September 14, 2006, Petitioners Robert Crawford, Arline Crawford, and the Citrus Springs Trust ("Petitioners" or "the Crawford Group") petitioned the Board to revoke an exemption granted New York Cross Harbor Railroad Terminal Corporation ("NYCH") and New York New Jersey Rail, LLC ("NYNJRL," collectively "the Applicants") on July 27, 2006. Petitioners alleged that Applicants had falsely represented the nature and status of their ownership and control of NYCH in order to obtain this exemption. Petitioners' request must be denied.

They have not established, let alone, carried the burden of proof required to support a petition to revoke an exemption. Their request is unaccompanied by anything more than mere allegations and some pages taken from the transcript of a court hearing. Finally, to the extent that their claims have any merit at all, the proper forum for relief is in the courts, not before the Surface Transportation Board.

BACKGROUND AND FACTS

New York New Jersey Rail LLC ("NYNJRR") is a class III short line railroad established by Gordon Reger and others ("the Reger Group") in December, 2005 to acquire the common carrier operating rights and obligations of NYCH.

As the Board will recall, NYCH was a class III short line railroad serving the New York New Jersey Metropolitan Area. Originally established in 1983 to acquire the assets and operations of the defunct New York Dock Railway, NYCH was one of two remaining car float operations in the United States. Its operations are described in more detail in pleadings filed with this agency in New York City Economic Development Corporation - Adverse Abandonment - New York Cross Harbor R.R. in Brooklyn, NY, STB Docket No. AB-596, (decisions served May 12, 2003, and August 27, 2003) and in

the decision New York Cross Harbor R.R. v. Surface Transp. BD., 374 F.3d 1177 (D.C. Cir. 2004). As relevant, it hauled freight between Brooklyn, NY, and Greenville, NJ, using tugboats and car ferries to float this traffic across New York Harbor. NYCH provided local freight service along the Brooklyn Waterfront and at Greenville, NJ. Most significantly, it provided the only competitive rail connection (to Norfolk Southern Railway Company) for freight customers on Long Island who would otherwise be captive to service by CSX Transportation, Inc.

NYCH has had no fewer than four owners and managements during its 23-year history. Initially, it was acquired by some of the employees of the former New York Dock Railway using financing provided by a freight car leasing company. In 1989 the Crawford Group acquired stock control of NYCH.¹ Around September 2001 two different parties, one headed by a John Marsala, the other headed by a Ron Bridges assumed at least the management if not control of NYCH from the Crawford Group. Finally, the Marsala Bridges Group transferred their interest to the present owners, the Reger

¹ It is ironic that the Crawford Group would be seeking equitable relief from a Court to enjoin a transfer of control. It was under the Crawford management that NYCH was accused of dumping 55-gallon drums containing carcinogens on the right of way, failing to pay New York City real estate taxes, and dealing with organized crime. Some of these allegations are detailed in filings made in the adverse abandonment proceedings noted on page 2, supra.

transferred their interest to the present owners, the Reger Group, in February 2004.

Initially upon acquiring NYCH, Applicants found that they had acquired a railroad with severely deteriorated equipment and facilities, especially an unreliable float bridge operation, significant accounts payable, substantial accrued and unpaid payroll and Railroad Retirement taxes, evidence of theft of corporate assets and opportunities by prior management, and poor relationships with the City of New York and the connecting railroads. NYCH's new management immediately set out to correct these problems. But the harder management worked at putting NYCH on a sound financial and operational footing, the more they realized that the name New York Cross Harbor Railroad carried a substantial, if not insurmountable, amount of baggage. Among other things, Applicants learned that the name New York Cross Harbor conjured up images of relationships with organized crime. The City of New York made it clear that it would never grant NYCH any sort of contract or license rights because of concern about such past relationships. Potential lenders and investors could not be attracted to provide capital for the NYCH entity, which made creation of a new entity for the NYCH assets and operations a

fundamental condition for any obtaining any participation in this venture.

Accordingly, the Reger Group realized that it had only two choices. It could divest itself of its interest in the NYCH and leave it to flounder with a bleak future. Or it could establish a new entity and arrange the proper funding to acquire NYCH's assets and operations and revitalize the railroad. It chose the latter and filed a verified notice of exemption with the Board on December 22, 2005, under the corporate family transaction procedures. After Applicants resolved certain disputes with Consolidated Rail Corporation and the City of New York's Economic Development Corporation, the Board granted the subject exemption on July 27, 2006.

Now that the Reger Group appears to be on the way to turning around the fortunes of this historically troubled but strategic railroad, those parties who used to control and/or manage NYCH are coming out of the proverbial woodwork in an attempt to reassert their ownership claims.

ARGUMENT

Petitioners fail to show any basis for revocation of Applicants' exemption. As a general matter, the Board and the ICC have consistently held that an exemption may be revoked "when it finds that application of a provision of

this subtitle to the person, class, or transportation is necessary to carry out the transportation policy of sec. 10101a of this title." Thus, the standard for revoking an exemption is whether regulation is needed to carry out the rail transportation policy. The party seeking revocation has the *burden of proof* [emphasis supplied], and petitions to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted. Minnesota Comm. Ry., Inc. - Trackage Exempt. - BN RR. CO., 8 I.C.C.2d 31, 35 (1991) and cases cited therein.

Typically, the Board revokes an exemption where the notice contains *materially* false or misleading information, the applicant has utilized the wrong regulatory procedure, the applicant is misusing Board procedures for a sham transaction, the transaction is very controversial requiring a more detailed record, or there is a *demonstrated* need for regulation. Id. at 37; The Land Conservancy of Seattle & King County -- Acquisition & Operation Exemption -- The Burlington Northern & Santa Fe Ry. Co., STB Finance Docket No. 33388 (STB served Sept. 26, 1997) (Board will revoke an exemption "[t]o protect the integrity of our processes"); Riverview Trenton Railroad Company - Acquisition and Operation Exemption - Crown

Enterprises, Inc., STB Finance Docket No. 33980 (STB served Feb. 15, 2002) (controversial proceeding not suitable for class exemption); SF&L Railway, Inc.-Acquisition And Operation Exemption-Toledo, Peoria And Western Railway Corporation, et al, STB Finance Docket No. 33995 (STB served October 17, 2002) (abuse of class exemption process); and Finance Docket No. 32407 (ICC served April 22, 1994) (material misstatements of fact and controversial proceeding).

Here the sole basis for Petitioners' request is their claim that Applicants have failed to disclose that "NYCH is the central topic in a number of lawsuits involving NYCH's parent company, New York Regional Rail Corporation ("NYRR")...(b) NYRR shareholders, and (c) certain former and present NYRR fiduciaries." Petitioners urge the Board to revoke the exemption claiming that "[A]pplicants have misrepresented ...the proposed transaction [as] a simple corporate intra-family transaction" or hold the proceedings in abeyance until the control issue is resolved in court, and/or rendered void *ab initio*. Petition at 1,2, and 6.

Petitioners do not cite, let alone, address the Board's standards for granting the revocation of an exemption. They do not identify any specific concerns demonstrating that reconsideration of the exemption is

warranted, that Applicants have utilized the wrong regulatory procedure, is misusing Board procedures for a sham transaction, or that the transaction is controversial from a transportation perspective² requiring a more detailed record. Most significantly, they have not identified any violation of the Board's governing statute, implementing regulations, or Board policy, nor have they shown any *demonstrated* need for regulation. In fact, the only thing they submit in support of their request is a series of pages taken from the transcript of a January 10, 2006, court hearing in litigation initiated by John Marsala and two others against the Reger Group. Simply stated, Petitioners have failed in their burden of proof.

There is a paucity of law involving the revocation of exemptions challenged on account of conflicting ownership claims. The reason is simple. Board regulatory authority is by its nature permissive. Once a transaction is approved, the parties are free to consummate (or not as the case may be). See, e.g., City of Alameda - Acquisition Exemption - Alameda Belt Line Railroad, STB Finance Docket No. 34798, slip op. served April 3, 2006 at 5 (City of Alameda) and Buckingham Branch Railroad Company - Lease -

² The Board interprets "controversial" as involving issues such as level of service, railroad competition, and common versus private carriage not issues of control or contract rights. See, City of Alameda, intra at 8.

CSX Transportation Inc., STB Finance Docket No. 34495

(Decision No. 6, served November 5, 2004, slip op. at 11).

Moreover, the Board, and the Interstate Commerce Commission before it, has repeatedly held that issues involving conflicting contractual and ownership claims are for the courts to decide. Id. The Board's role is limited just to granting regulatory approval so that the transaction can proceed, when and if the parties are able to do so.

Applicants wish to call to the Board's attention Trimax Holdings, Inc., Corporate Family Transaction Exemption-Allegany Valley Railroad Company and Southwest Pennsylvania Railroad Company, STB Finance Docket No. 33413 (cited as Trimax, served Sept. 15, 2000, involving a challenge to a corporate family transaction exemption by a group involved in civil litigation over control of a short line railroad). Petitioners in Trimax claimed that the exemption notice contained false and misleading information because, as relevant here, the notice failed to disclose the contested nature of the transaction and thus was not simply a corporate family transaction. In denying the revocation request, the Board ruled that under the pertinent regulation [49 CFR 1180.6(a)(1)(i)], the notice need only include "[a] brief summary of the proposed transaction. . . ." In Trimax information about the

contested nature of the AVR transaction was not required because approval was not sought for that transaction. Rather, the transaction for which regulatory approval was sought involved Trimax's acquisition of control of SWP. The notice briefly and accurately summarized the SWP transaction.

Similarly under 49 CFR 1180.2(d)(3), applicable to corporate family transactions, Applicants merely represented that they had majority control of NYCH and wanted to transfer NYCH's rail operating rights and obligations to NYNJR, a corporate sibling. 93.7% of the capital stock of NYCH is owned by Mid-Atlantic Northeast Rail, LLC, and 100% of NYNJR is owned by the same entity. As set forth in detail in [the Surface Transportation Board filing for the Reger Group's control of multiple railroads], all these entities are under the ultimate control of Gordon Reger.

Petitioners recite that the Marsala Bridges Group filed a lawsuit in New York court to enjoin any transfer of NYRR assets including NYCH assets and asserting that the Reger Group is "under Court Order to notify the Court of any potential transfer of NYRR's assets before moving forward with any proposed transfer." Petition at 4. In order to set the record straight in these proceedings,

Applicants submit an Affidavit prepared by Kenneth W. Africano, lead counsel for New York Regional Rail Corporation, in several lawsuits including those brought by both the Petitioners and by John Marsala and others.

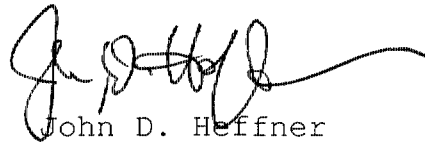
As Mr. Africano notes, the New York Court hearing litigation brought by both Petitioners and Marsala declined to grant any TRO extension sought by the Marsala Bridges Group. Affidavit at Para. 3. At oral argument held on January 10, 2006, Justice Herman Cahn asked counsel for NYRR and Gordon Reger to advise him if there were any further imminent transfers of assets. Since then, NYRR and Mr. Reger have continued to advise the Court of any transfers including the transfer of the operating authority from NYCH to NYNJR. Moreover, NYRR and Reger fully informed the Court about the STB proceedings including the Board's order granting NYCH's application to transfer its operating authority to NYNJR. Despite these notifications, Justice Cahn has not granted a preliminary injunction or any other relief interfering with the STB application or prohibiting a transfer of operating authority to NYNJR. Affidavit at Paras. 3 and 4. Finally, regarding the argument that Gordon Reger's acquisition of NYRR stock through his corporation, Transit Rail, LLC, was void and without affect, the Affidavit notes that State Supreme

Court Justice Demerast for Kings County had denied a motion by the Crawford Group for an injunction against that stock transfer. Affidavit at Para. 5.

CONCLUSION

The Board should deny the Petitioners' request for revocation for failure to satisfy their burden of proof. To the extent that the present controversy has any merit at all, a very debatable conclusion, this matter belongs in the appropriate court rather than before the Board. Petitioners claim should be dismissed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. D. Heffner', with a long, sweeping horizontal line extending to the right.

John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800,
Washington, D.C. 20036
(202) 263-4180

Dated: October 4, 2006

CERTIFICATE OF SERVICE

I, John D. Heffner, certify that a copy of the foregoing Petition Under 49 U.S.C. 10502(d) to Revoke Exemption Under 49 CFR 1180.2(d)(3) Granted to New York New Jersey Rail LLC and New York Cross Harbor Railroad Terminal Corporation was served on October 4, 2006 to the following:

John T. Shaban, Esq.
Whitman Breed Abbott & Morgan LLC
100 Field Point Road
Greenwich, Connecticut 06830



John D. Heffner

BEFORE SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34813

**PETITION UNDER 49 U.S.C. 10502(d) TO REVOKE
EXEMPTION UNDER 49 CFR 1180.2(d)(3) GRANTED TO
NEW YORK NEW JERSEY RAIL LLC AND
NEW YORK CROSS HARBOR RAILROAD TERMINAL CORP.**

AFFIDAVIT OF KENNETH W. AFRICANO

STATE OF NEW YORK)
) ss.
COUNTY OF ERIE)

KENNETH W. AFRICANO, ESQ. being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice law in the State of New York and am a partner of the firm of Harter Secrest & Emery LLP.

2. I am serving as lead counsel in the representation of New York Regional Rail Corporation ("NYRR") in several different lawsuits, including a lawsuit in New York County entitled *Robert R. Crawford, Arline C. Crawford, Citrus Springs Trust v. John Marsala, Ronald W. Bridges, et al.* ("Crawford Action"), Index No. 604283/05 and a similar action brought by John Marsala in New York County entitled *John Marsala, Steven Hirsch, and Joel Marcus. v. Gordon Reger, Transit Rail, LLC, GJ Railco*

Acquisition, LLC, Donald Hutton, James W. Cornell, Russell J. Arnst, Douglas Szalasny, Andreas Gruson, New York Regional Rail Corp., et al., (“Marsala Action”), Index No. 604283/05. The Marsala Action and the Crawford Action are both pending in New York State Supreme Court before Justice Cahn and assert many of the same claims.

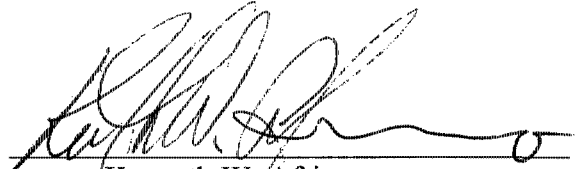
3. In the Crawford Group’s filing before the Surface Transportation Board, Crawford’s attorney makes the claim that there is a court order requiring NYRR and its subsidiary, New York Cross Harbor Terminal Corporation (“NYCH”), to notify the State Supreme Court of any transfer of assets by NYRR or NYCH. In the Marsala Action, plaintiff filed a motion by order to show cause on December 19, 2005 seeking a temporary restraining order and preliminary injunction to enjoin transfer of assets by NYRR and NYCH. Justice Cahn denied the temporary restraining order and has, to date, never granted the preliminary injunction. At the oral argument on January 10, 2006, Justice Cahn asked counsel for NYRR and Reger to advise him if there were further imminent transfers of assets. Since that time, we have continued to so notify Justice Cahn of transfers, including the transfer of the operating authority from NYCH to New York New Jersey Rail, LLC (“NYNJR”).

4. As part of the submissions on the motion for preliminary injunction, Justice Cahn was fully informed about the STB proceedings. Plaintiff’s attorney in the Marsala Action, Eric Rosenberg, submitted an affidavit stating that it had found documents on the STB web site showing that NYCH had submitted an application to the STB to approve the transfer of certain assets to NYNJR. *See* Rosenberg Affidavit sworn to January 5, 2006 at ¶2. That transaction was further disclosed to the Court in an Affidavit of Gordon Reger sworn to January 9, 2006 at ¶3. That affidavit specifically

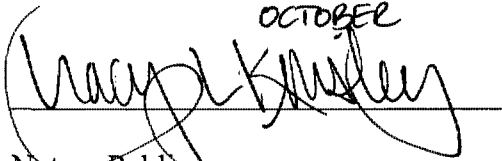
states that NYCH wished to transfer the STB operating authority to NYNJR and specifically advised the Court that NYCH had filed a verified "Notice of Exemption Under 49 CFR 1180.2(d)(3) with the Surface Transportation Board for permission to transfer the operating authority." Attached hereto as Exhibit A is a letter dated February 8, 2006 whereby Gordon Reger's separate counsel, Frank T. Gaglione, advised Justice Cahn that Conrail had agreed to withdraw its opposition to the transfer of operating rights as filed with the STB and further advised that NYNJR will withdraw its request to hold the Surface Transportation Board Notice of Acceptance in abeyance. Attached hereto as Exhibit B is my September 7, 2006 letter to Justice Cahn advising the Court that the Surface Transportation Board had granted NYCH's application to transfer the operating authority to NYNJR and advising the Court that the operating authority was transferred to NYNJR in accordance with an intercompany operating agreement. Despite all of these notifications to Justice Cahn, Justice Cahn has not granted a preliminary injunction nor has he granted any other relief prohibiting this transfer or in any way interfering with the STB application or the transfer of operating authority.

5. The Crawford Group's Petition to the STB also claims that Gordon Reger's acquisition of NYRR stock, through his corporation Transit Rail, LLC, was void and without effect. The Crawford Group has previously been unsuccessful with this argument. On July 14, 2004 Justice Demerast, from the State Supreme Court in Kings County, denied a motion for preliminary injunction whereby the Crawford Group sought to enjoin the transfer of stock in NYRR to Transit Rail. A copy of that decision is attached hereto as Exhibit C.

6. It is clear that the Crawford Group's Petition for Revocation is an attempt to obtain from the STB relief that the Group has been repeatedly been unable to obtain from the Courts.


Kenneth W. Africano

Subscribed and sworn to before
me this 2ND day of ~~September~~, 2006

OCTOBER


Notary Public

My Commission Expires: _____

TRACY L. KNISLEY
Notary Public, State of New York
Qualified in Niagara County
Commission Expires: December 16, 2007

EXHIBIT A

FRANK T. GAGLIONE
OF COUNSEL5110 MAIN STREET / SUITE 218
AMHERST / NEW YORK 14221
T 716.839.1465 / F 716.839.1589

FGAGLIONE@HISCOCKBARCLAY.COM

February 8, 2006

Hon. Herman Cahn
Justice of the Supreme Court
New York County Court House
60 Centre Street, Room 615
New York, NY 10007Re: Marsala v. Reger et al.
Index No. 604283/05
File No. 3017981

Dear Justice Cahn:

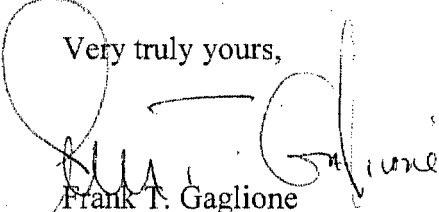
As requested, I am advising the Court that Conrail has agreed to withdraw its opposition to the transfer of the operating rights as a common carrier as filed with the Surface Transportation Board. We expect that Conrail will so advise the Surface Transportation Board in writing shortly. Accordingly, NYNJR will withdraw its request to hold the Surface Transportation Board Notice of Exemption in Abeyance.

Upon completion of the foregoing, NYCH and NYNJR will have the requisite authority to effect the transfer of the operating rights as a common carrier to NYNJR.

In the event that the operating rights are to be transferred to NYNJR, we will advise the Court of the terms and conditions of such a transfer.

Please advise the undersigned should the Court wish to discuss the foregoing by telephone conference.

Very truly yours,


Frank T. Gaglione

FTG/ms

cc: Eric Rosenberg, Esq.
Kenneth W. Africano, Esq.
✓ Kenneth J. Kelly, Esq.
Mr. James Cornell
Mr. Gordon Reger

NS

EXHIBIT B



Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

WWW.HSELAW.COM

September 7, 2006

Hon. Herman Cahn, J.S.C.
New York State Supreme Court
Part 49, Courtroom 232
60 Center Street
New York, New York 10007

Re: Marsala et al. v. Reger et al.
Index No.: 604283-05

Dear Justice Cahn:

This letter will provide a more detailed report on the status of issues addressed during our last telephone conference on August 29, 2006. As previously reported to the Court and publicly disclosed with the Surface Transportation Board ("STB"), in December 2005 NYCH had applied for permission to conduct a transfer of the operating authority of NYCH to New York New Jersey Rail LLC ("NYNJRR"), another entity owned and controlled by Gordon Reger. NYCH's application sought approval pursuant to the STB exemption for intercorporate family transfers. That application, which was initially opposed, has been granted. A copy of the permission is attached. The operating authority has in fact been transferred to NYNJRR, in accordance with that application and in accordance with an intercompany operating agreement.

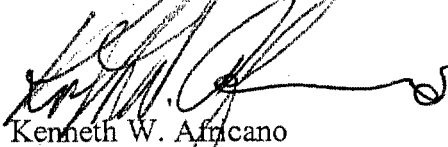
Contrary to Mr. Shaban's assertions, this is merely an intercompany transaction that does not place the assets beyond the reach of this Court or the parties. Nor does this event further plaintiff's claims for a preliminary injunction. In addition to all our reasons stated in our prior papers in opposition to the preliminary injunction, plaintiffs' claim is one for monetary damages. The railroad was sold at a fair value in accordance with an appraisal from one of the nation's leading appraisal firms. If, as plaintiffs' counsel contends, insufficient consideration was paid, then that claim can be remedied with an award of damages.

In our telephone conversation, Mr. Shaban also stated that the lease between NYCH and Conrail for the Greenville yard had been terminated. That is simply not true. There have been discussions between NYCH and Conrail with regard to Conrail's desire to use a portion of the Greenville yard. Those discussions have not culminated in an agreement and there has been no alteration to the Conrail lease.

Hon. Herman Cahn, J.S.C.
September 7, 2006
Page 2

I had been advised that there was a *lis pendens* filed on the Greenville Yard by NTS, an entity owned by Ronald Bridges and Daryl Caplan (defendants in the New Jersey action). In the past several days, we have searched County records and have been unable to locate any such *lis pendens* and it would appear that no such filing has been made. Thus, there is no legal impediment to the Conrail transaction occurring. As of the present time, discussions with Conrail continue.

Very truly yours,



Kenneth W. Africano

DIRECT DIAL: 716-845-4239

E-MAIL: KAFRICANO@HSELAW.COM

KWA/Imp
Enclosure

cc: Eric Rosenberg, Esq.
Frank Gaglione, Esq.
Thomas Knab, Esq.
John Shaban, Esq.
Kenneth Kelley, Esq.

36608

SERVICE DATE – JULY 27, 2006

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34813]

New York New Jersey Rail LLC and New York Cross Harbor Railroad Terminal Corp.–

Corporate Family Transaction Exemption

New York New Jersey Rail LLC (NYNJRR) and New York Cross Harbor Railroad Terminal Corp. (NYCH) (collectively, petitioners) have filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a transaction within a corporate family.¹

Under the proposed transaction, NYCH will transfer its operating rights and common carrier obligations to NYNJRR. NYNJRR will assume all of NYCH's rights and obligations to provide rail service as a common carrier.

¹ Petitioners originally filed their notice of exemption on December 22, 2005. By decision served on January 10, 2006, the Board, at the request of petitioners, held the proceeding in abeyance until further notice to allow Consolidated Rail Corporation (Conrail) to discuss its concerns with petitioners regarding the effect of the proposed transaction on NYCH's contractual obligations to Conrail. After reaching an agreement with Conrail, petitioners filed an amended notice on February 24, 2006. Subsequently, the New York City Economic Development Corp. (NYCEDC), acting in its capacity as contractor to the City of New York (the City), filed a motion to request that the Board hold the proceeding in abeyance until the City had confirmation from petitioners that the City's rights, pursuant to a permit dated September 1, 1984, would not be compromised, altered or otherwise modified by the proposed transaction. On July 11, 2006, NYCEDC withdrew its request to hold the proceeding in abeyance. By letter filed on July 12, 2006, petitioners indicated that their exemption request is now unopposed and request that the Board proceed with notice of the proposed transaction.

NYCH, a Class III short line railroad, owns, leases and operates railroad tracks and facilities at Greenville, NJ,² Jersey City, NJ, and Brooklyn, NY, and operates between these points by means of a car float across New York Harbor. NYNJR is a newly formed limited liability company established and owned by Mid Atlantic New England Rail, LLC (MANER),³ an entity owned and controlled by Gordon Reger (Mr. Reger), a noncarrier individual. Entities controlled by Mr. Reger own a majority of NYCH's outstanding stock and, by reason of that ownership, indirectly control NYCH. Mr. Reger currently controls one other short line railroad, New Amsterdam & Seneca Railroad Company, LLC.⁴

The transaction was scheduled to be consummated on or after March 3, 2006 (7 days after the amended notice of exemption was filed).

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). According to the parties, the transaction will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the corporate family. Petitioners state that the proposed corporate changes will be limited to entities controlled

² NYCH leases Conrail's Greenville Yard, pursuant to an agreement dated December 15, 2002.

³ MANER established NYNJR to facilitate the acquisition of and/or investment in short line and regional railroad companies, such as NYNJR.

⁴ See Gordon Reger—Continuance in Control Exemption—New Amsterdam & Seneca Railroad Company, LLC, STB Finance Docket No. 34825 (STB served Feb. 23, 2006).

by Mr. Reger.⁵ Petitioners also state that the proposed transfer of NYCH's rights and obligations to NYNJR will facilitate better access to equity and debt capital which will enable the improvement of the Greenville, NJ, and Brooklyn, NY rail yards and the condition of NYCH's equipment, create a safer working environment for railroad employees, and increase the railroad's ability to serve the freight transportation needs of the public in the New York, New Jersey, New England, and Mid Atlantic markets.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the amended verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34813, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on

⁵ NYCH states that it will not transfer to NYNJR its Greenville Yard lease until it obtains Conrail's consent. Furthermore, NYCH's ability to transfer its assets to NYNJR is subject to the terms of its 2002 Greenville Yard lease with Conrail and its settlement agreement with Conrail.

John D. Heffner, Esq., John D. Heffner, PLLC, 1920 N Street, N.W., Suite 800,
Washington, DC 20036.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: July 21, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

EXHIBIT C

At an I.A.S. Trial Term, Part of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 14 day of July 199 2004

P R E S E N T :

Hon.

C. Demarest

Justice

Arlene Crawford, Robert R. Crawford, et al

Plaintiff(s)

Cal. No.

- against -

NY Regional Rail et al

Defendant(s)

Index No. 27431/03

The following papers numbered 1 to read on this motion

Papers Numbered

Notice of Motion - Order to Show Cause
and Affidavits (Affirmations) Annexed

Answering Affidavit (Affirmation)

Reply Affidavit (Affirmation)

Affidavit (Affirmation)

Pleadings - Exhibits

Stipulations - Minutes

Filed Papers

Following argument and upon papers, Plaintiff
has failed to sustain burden under CPLR §6313
of irreparable injury and probability of success on
merits. TRO entered 6/3/04 is vacated.
Parties are referred to mediation on consent.

Adjourned to 8/18/04

ENTER

C. Demarest

J.S.C.

HON. CAROLYN E. DEMAREST

JUN 07 2004 6:22PM KENNETH T WASSERMAN

2122440980

p. 1

ORIGINAL
RON KAPLAN

ORIGINAL

Hand DELIVERY 3:00 PM
6-7-04

DSC
COM2
6/16

(E)

At an IAS Part of the Supreme
Court of the State of New York,
held in and for the County of
Kings, at the Courthouse thereof,
located at 360 Adams Street,
Brooklyn, New York, on the 3rd day
of June, 2004.

PRESENT:

HON. CAROLYN E. DENARIST

Justice

ARLINE CRAWFORD,
ROBERT R. CRAWFORD, and
CITRUS SPRINGS TRUST,

Plaintiffs,

- against -

NEW YORK REGIONAL RAIL CORP.
and JOHN MARSALA,

Defendants.

Index No. 27431/03

ORDER TO
SHOW CAUSE

TEMPORARY
RESTRAINING
ORDER
REQUESTED

KINGS COUNTY
CLERK
JUN 10 2004
6-2-04

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Upon the affidavit of plaintiff Robert R. Crawford, sworn to on the 28th day of May, 2004 and the exhibits annexed thereto, and the Memorandum of Law submitted herewith, and upon all the papers and proceedings had herein,

AND, it appearing that plaintiffs ^{may be} entitled to the relief requested and this Order To Show Cause and Temporary Restraining Order pursuant to CPLR 6301 and 6313 on the grounds that plaintiffs have shown that immediate and irreparable injury, loss or damages ^{may} result unless the Defendants are restrained before a hearing can be had with respect to a preliminary injunction herein.

KINGS COUNTY CLERK

OFFICE

\$45.00 FEE PAID

John P. [Signature]

JUN 07 2004 6:23PM

KENNETH T WASSERMAN

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P. 2

NOW, on motion of Ron Kaplan, Esq., attorney for plaintiffs, it is hereby

~~_____~~ ^{LKR HJK} defendants New York Regional Rail Corp. and John Marsala, or

their attorneys, show cause at ~~_____~~ ^{AS} Part of this

Court, (Room 756), to be held at the courthouse thereof, located at 360 Adams

Street, Brooklyn, New York, on the 16th day of June, 2004, at 9:30 o'clock

in the Forenoon of that day, or as soon thereafter as counsel can be heard, why an

order should not be entered herein issuing a preliminary injunction

- (a) pursuant to CPLR 6301 and 6311 preliminarily enjoining and restraining defendants, their agents, servants, employees, or attorneys, from engaging in any act, making any threat, or engaging in any transaction to interfere with plaintiff Robert Crawford's rights in and to any preferred shares (Classes A, B and C) of defendant New York Regional Rail Corp. during the pendency of this action; and
- (b) pursuant to CPLR 6301 and 6311 preliminarily enjoining and restraining defendants from engaging in any act, making any threat or engaging in any transaction to transfer, to assign, or to deliver any preferred shares (Classes A, B and C) of defendant New York Regional Rail Corp. to any third party, including without limitation Transit Rail, LLC, during the pendency of this action.

327 ORDERED, that pending the hearing of such motion, defendants New York Regional Rail Corp. and John Marsala, their agents, servants, employees, or attorneys be and the same hereby are pursuant to CPLR 6313 temporarily enjoined and restrained from:

EXHIBIT A

EXHIBIT B

EXHIBIT C

JUN 07 2004 6:23PM

KENNETH T WASSERMAN

2122440980

(a) engaging in any act, making any threat, or engaging in any transaction to interfere with plaintiff Robert Crawford's rights in and to any preferred shares (Classes A, B and C) of defendant New York Regional Rail Corp.; and

~~(b) engaging in any act, making any threat or engaging in any transaction to transfer, to assign, or to deliver any preferred shares (Classes A, B and C) of defendant New York Regional Rail Corp. to any third party, including without limitation Transit Rail, LLC.~~

~~LET PERSONAL~~

~~service of this Order To Show Cause and Temporary Restraining Order and the papers upon which it is based be made on or before June 9, 2004, or~~

~~AND ANY OTHER PARTY ENTITLED TO NOTICE~~
~~and a copy, upon defendants' counsel, Kenneth Wasserman, Esq., and that such service be deemed good and sufficient service thereof,~~

Enter,

J.S.C.

EXHIBIT A

EXHIBIT B

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

ARLINE CRAWFORD,
ROBERT R. CRAWFORD and
CITRUS SPRINGS TRUST,

Index No. 27431/03

Plaintiffs,

- against -

AFFIDAVIT
IN SUPPORT

NEW YORK REGIONAL RAIL CORP.,
and JOHN MARSALA,

Defendants.

STATE OF MISSISSIPPI)

ss:

COUNTY OF ALCORN)

ROBERT R. CRAWFORD, being duly sworn, deposes and says:

1. I am a plaintiff in the above entitled action. I am fully and personally familiar with the facts and circumstances of this matter.

2. I make this affidavit in support of our application asking this court to intervene and prevent the Defendants from selling the securities that are constitute a substantial portion of the relief being sought by Plaintiffs in this action.

3. Defendants New York Regional Rail Corp. and John Marsala (Defendants) have announced a plan to resell the preferred shares originally owned by me (originally, Series B preferred shares), and which were misappropriated by defendant John Marsala, and recast as Series C preferred shares. These very same shares, originally held by me in my name, are now threatened to be changed again, this time to "Series D," according to filings made by Defendants with the Securities and Exchange Commission.

4. It is respectfully requested that this Court issue an Order herein
 - (a) pursuant to CPLR 6313 temporarily enjoining and restraining defendants, their agents, servants, employees, or attorneys, from engaging in any act, making any threat, or engaging in any transaction to interfere with plaintiff Robert Crawford's rights in and to any preferred shares (Classes A, B and C) of defendant New York Regional Rail Corp.; and
 - (b) pursuant to CPLR 6313 temporarily enjoining and restraining defendants from engaging in any act, making any threat or engaging in any transaction to transfer, to assign, or to deliver any preferred shares (Classes A, B and C) of defendant New York Regional Rail Corp. to any third party, including without limitation Transit Rail, LLC.

Procedural History

5. The Court's file will reflect the following procedural history: Plaintiffs served and filed a motion for summary judgment in lieu of complaint with the Court on or about May 15, 2004, together with a summons and complaint.

6. Defendants subsequently opposed Plaintiff's motion for partial summary judgment in lieu of complaint and cross-moved for the disqualification of Plaintiff's counsel.

7. By decision of the Court dated January 13, 2004 (Exhibit A), Plaintiff's motion for summary judgment was denied and Plaintiff's counsel was disqualified. The parties have since served and filed their pleadings (Summons and Complaint, Exhibit B; Verified Answer, Exhibit C).

8. Plaintiff's are now represented by Ron Kaplan, Esq., who has formally appeared herein, and are prepared to proceed vigorously with this litigation.

NYRR's Recent SEC filings

9. It has come to our attention that Defendants are attempting to frustrate our claims by alienating or disposing of the property we seek to recover.

10. Defendant New York Regional Rail Corp. (NYRR), is a publicly traded entity, and as such is subject to SEC filing and disclosure requirements. NYRR, with the aid and assistance of defendant John Marsala (Marsala), has filed recent disclosures that have revealed its intent to dispose of the preferred shares that are my rightful property.

11. Until recently the parties had managed to preserve the status quo while trying to resolve the disputes that arose between them. Yet now, Defendants have embarked upon a course of action which threatens to (a) destroy the status quo pending resolution of the parties' dispute, (b) strip Robert Crawford of his ownership of the preferred shares, (c) dilute and devalue shares of Defendant NYRR's common stock held by Plaintiff and other shareholders.

12. I submit that Defendants' threats are unconscionable from the perspective of what is at issue here. In and around 1997, 1998 and 1999, my wife, plaintiff Arline Crawford, and I advanced funds to defendant NYRR to cover operating costs and debt reduction. At the time, my wife and I were actively involved in the operation of the railroad owned by NYRR. Funds were also similarly advanced by plaintiff Citrus Springs Trust. In return, plaintiffs accepted promissory notes and preferred shares from NYRR.

Trust. In return, plaintiffs accepted promissory notes and preferred shares from NYRR reflecting the sums loaned. All transactions were disclosed in SEC filings made by NYRR at the times of the transactions.

13. In NYRR's Amended 10KSB (Exhibit D), at page 17, Defendant has disclosed an imminent intent to transfer, alienate hypothecate, sell the preferred securities at issue. NYRR has announced, first, that it will seek shareholder authority to issue new shares of common stock, in preparation for a sale of securities.:

SHARES RESERVED FOR POTENTIAL FUTURE ISSUANCE.

The Company does not currently have the shares it requires by virtue of obligations under various notes, options, warrants, employment agreements, consulting agreements, retainer agreements and other agreements. The Company's Board of Directors intends to request the shareholders to authorize an increase in the number of shares of common stock to 280,000,000 from the current 200,000,000. See the Company's PRE 14A "Other preliminary proxy statements", dated March 31, 2004, as amended, which is hereby incorporated by reference.

14. Defendants expound further on the proposed transaction as follows, identifying the proposed third party purchaser of newly issued "Series D Preferred Stock" as an entity named Transit Rail, LLC (Exhibit D, page 17):

Pursuant to an agreement dated February 4, 2004 Transit Rail, LLC purchased 750 shares of Series D Preferred Stock at a purchase price of \$1,000 per share and agreed to purchase up to 1,750 additional shares of Series D Preferred Stock. In connection with the transaction Transit Rail LLC received a proxy from the holder of the shares of Series C Preferred Stock granting it the right to vote approximately 39.8% of the Company's voting securities. Upon the purchase of 1,700 shares of Series D Preferred Stock and the conversion of all of the outstanding shares of Series C Preferred Stock each share of Series D Preferred Stock shall be entitled to 120,000 votes, which would represent 50.5% of the Company's voting securities based upon the number of shares of common stock presently outstanding.

Affiliates of Transit Rail, LLC own or operate a fleet of approximately 575 rail cars that transport construction and demolition material generated from high-cost disposal markets in the Northeastern United States to low-cost landfills located in the Midwest. Such affiliates own and operate rail-served transfer stations in Connecticut and Massachusetts which handle construction and demolition material. They also provide rail disposal services for the largest transfer station in New York City and operate a municipal solid waste landfill in Ohio. The Company expects that in addition to its investment, Transit Rail, LLC or its affiliates in conjunction with the Company will

submit proposals and bid on projects, which are in the waste transportation and disposal areas, utilizing the Company's unique rail assets.

In its most recent SEC disclosure, NYRR has indicated that dividends were accruing on the Series C Preferred Stock. In December 2003, accrued dividends on 440,000 shares of Series C Preferred Stock totaling \$118,131 were converted into 2,050,887 shares of common stock. Upon conversion the holder of the shares of Series C Preferred Stock received a warrant to purchase an additional 2,828,968 shares of common stock at an exercise price of \$0.12 per share.

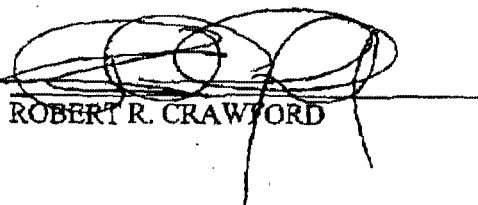
15. There have been other disclosure filings by Defendants reiterating the imminent transfer of the preferred stock of NYRR (See, PRE 14A filing dated March 31, 2004, "General Solicitation Statement" [Exhibit E]; and Form 8K dated February 19, 2004, Item 1 [Exhibit F]). Plaintiffs believe that the sale and final disposition of the Series C Preferred Stock is imminent, and will result in the irreparable loss of these tangible securities.

16. Plaintiffs respectfully request that a preliminary injunction be issued by this Court restraining Defendants from proceeding with the proposed transaction, or any action which would or could negate, dilute or alter my rights to preferred shares of NYRR. I am advised by counsel and accordingly believe that grounds for the issuance of such a preliminary injunction exist under CPLR 6301 and 6311, and that it is necessary and appropriate that such action be taken by the Court to preserve the status quo and prevent manifest injustice. If the defendants are allowed to commit any of the threatened acts, it is obvious that they would render the judgment sought herein ineffectual under CPLR 6301. Furthermore, since Plaintiffs are seeking injunctive relief with respect to the very acts which Defendants are committing and threatening to commit, it is apparent that Defendants' threatened course of conduct will injure Plaintiffs within the meaning of CPLR 6301.

17. I further request that Defendants be temporarily restrained, pending hearing of the motion for preliminary injunction, because Plaintiffs will suffer immediate and irreparable injury, loss and damage unless Defendants are restrained before that hearing can be held.

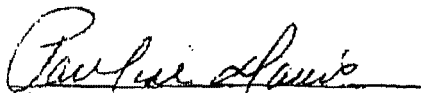
18. No prior application has been made for the relief requested herein. This is not an action arising out of a labor dispute as defined in New York Labor Law §807, nor against a public officer, board or municipal corporation of the state to restrain the performance of statutory duties.

19. For the reasons set forth above, I respectfully request this Court to enter an Order To Show Cause and Temporary Restraining Order in the form annexed.



ROBERT R. CRAWFORD

Sworn to before me this
28th day of May, 2004



Pauline Lewis
Notary Public

Notary Public State of Mississippi At Large
My Commission Expires: March 15, 2008
Bonded Thru Heiden, Brooks & Garland, Inc.